

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. _____

IN RE:)	
)	
BellSouth Telecommunications, Inc. d/b/a AT&T)	Petition for Temporary, Emergency
Southeast d/b/a AT&T South Carolina's Notice of)	Relief to Prevent Suspension or
Suspension and Disconnection of Service of)	Termination of Service
EveryCall Communications, Inc.)	
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)	

**EVERYCALL'S PETITION FOR TEMPORARY, EMERGENCY RELIEF
TO PREVENT SUSPENSION OR TERMINATION OF SERVICE**

EveryCall Communications, Inc. ("EveryCall") hereby files the following Petition in response to the Notice of Disconnect for EveryCall (the "Notice") submitted by BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina ("AT&T") to the Public Service Commission of South Carolina ("Commission") on June 21, 2010.

EveryCall requests that the Commission prohibit AT&T from suspending, discontinuing or terminating wholesale service to EveryCall pending resolution, in a consolidated hearing of substantially similar AT&T complaint cases (the "Consolidated Complaints")¹, of core issues identical to those presented in this matter.

¹ BellSouth Telecommunications, Incorporated d/b/a AT&T Southeast d/b/a AT&T South Carolina v. Affordable Phone Services, Incorporated d/b/a High Tech Communications, Docket No. 2010-14-C; BellSouth Telecommunications, Incorporated d/b/a AT&T Southeast d/b/a AT&T South Carolina v. Dialtone & More Incorporated, Docket No. 2010-15-C; BellSouth Telecommunications, Incorporated d/b/a AT&T Southeast d/b/a AT&T South Carolina v. Tennessee Telephone Service, LLC d/b/a Freedom Communications USA, LLC, Docket No. 2010-16-C; BellSouth Telecommunications, Incorporated d/b/a AT&T Southeast d/b/a AT&T South Carolina v. OneTone Telecom, Incorporated, Docket No. 2010-17-C; BellSouth Telecommunications, Incorporated d/b/a AT&T Southeast d/b/a AT&T South Carolina v. dPi Teleconnect, LLC, Docket No. 2010-18-C; BellSouth Telecommunications, Incorporated d/b/a AT&T Southeast d/b/a AT&T South Carolina v. Image Access, Incorporated d/b/a New Phone, Docket No. 2010-19-C.

PARTIES

1. EveryCall is a competitive local exchange provider authorized to offer telecommunications services in South Carolina. See Docket No. 2003-297-C. EveryCall's address is 4315 Bluebonnet Blvd., Suite A, Baton Rouge, LA 70809.

2. AT&T is a Georgia corporation authorized to do business in South Carolina as an incumbent local exchange provider. AT&T's address is 675 West Peachtree Street, Suite 4300, Atlanta, Georgia 30375.

3. The persons authorized to receive notices, pleadings and other communications on behalf of EveryCall are:

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PETITION

4. EveryCall is a local exchange telephone company providing service to approximately 3,000 residential subscribers in South Carolina, the vast majority of whom are low income customers.

5. EveryCall resells the services of AT&T. As a reseller, EveryCall is entitled

under federal law to receive from AT&T the same credits and promotional discounts that AT&T gives to its own retail customers. Those credits and discounts often offset, in large part, EveryCall's monthly bills from AT&T. EveryCall has hired CGM, LLC, a telecommunications consulting firm, to analyze its bills from AT&T, to monitor AT&T's retail promotions, request appropriate credits and discounts, and manage billing disputes with AT&T. EveryCall has timely paid to AT&T all sums due after the subtraction of promotional discounts determined by CGM to be owed to EveryCall. Thus, there are no undisputed amounts owed by EveryCall to AT&T.

6. On June 21, 2010, AT&T filed the Notice with the Commission as a Non-Docketed Item. According to the Notice, AT&T proposes to suspend EveryCall's service on July 6, 2010 and disconnect its service on July 21, 2010 on the grounds that EveryCall has failure to pay disputed, billed charges. For the reasons set forth below, EveryCall opposes AT&T's proposed actions.

7. EveryCall has been a CLEC for more than two and one half years. Prior to AT&T's Notice, EveryCall received only one past due notice, and, one request for financial information (to assess EveryCall's credit worthiness). In both instances, EveryCall answered AT&T promptly, and heard nothing further from AT&T. Indeed, several times during this two and a half years, EveryCall has raised concerns with AT&T about the growing unresolved promotional credits and disputes.² Prior to the Notice, AT&T ignored EveryCall's attempts at timely resolution. On one occasion, AT&T's accounting department informed EveryCall that AT&T had no way to track all of the retail promotions being offered by AT&T to its retail customers, and therefore, no way to track or resolve all the disputes.

² See, e.g., August 22, 2008 Agenda for meeting between EveryCall and AT&T raising concerns regarding AT&T's timely and accurate feedback on the status of promotions and disputes, attached as Exhibit A.

8. Now, after AT&T has refused for years to timely process the promotional requests or disputes, it demands a lump sum payment of all moneys it claims EveryCall owes. EveryCall contends that the amounts demanded by AT&T do not reflect a good faith calculation of sums due and owing because AT&T has failed to timely process EveryCall's requested promotional credits. After failing to uphold its duty under both the law and the parties' interconnection agreement, AT&T should not now be heard to demand payment of sums under that same agreement that do not even take into account the credits owed to EveryCall. It is an unrealistic burden on any company's cashflow to have to pay disputed amounts relating to promotions that go unprocessed or unresolved for years. After disregarding its own responsibility to timely process the promotional credits or resolve the related disputes, AT&T threatens to disrupt service to approximately 3,000 low income South Carolina customers.

9. Section 11 of the General Terms and Conditions of EveryCall's Interconnection Agreement with AT&T, relating to adoption of agreements, states: "Pursuant to 47 U.S.C. § 252(i) and 47 C.F.R. § 51.809, BellSouth shall make available to EveryCall any entire interconnection agreement filed and approved pursuant to 47 U.S.C. § 252. The adopted agreement shall apply to the same states as the agreement that was adopted, and the term of the adopted agreement shall expire on the same date as set forth in the agreement that was adopted." In light of the growing disputed balances and failure of AT&T to timely process the promotional credits or resolve the related disputes, in October of 2009, EveryCall's president, Kyle Coats, requested that EveryCall be allowed to opt-in to the "Image Access" interconnection agreement, which would specifically allow EveryCall to withhold payment for disputed amounts until those disputes were ultimately resolved. However, AT&T refused EveryCall's legal and contractual right to opt-in to the Image Access agreement, claiming that EveryCall could not opt-in to the

agreement until 270 days from the expiration of EveryCall's current interconnection agreement. Had AT&T met its legal and contractual obligation to allow EveryCall to opt-in to the "Image Access" interconnection agreement, AT&T would have no grounds for threatening disconnection and would have had a greater incentive to timely resolve EveryCall's promotional requests and disputes. In light of AT&T's wrongful denial, EveryCall should be considered to have opted-in to the Image Access interconnection agreement as of October 2009.

10. A contract may be breached, either actively by doing something inconsistent with the obligation it requires or by passively not doing what was covenanted to be done, or not doing it at the time, or in the manner stipulated or implied from the nature of the contract. AT&T's actions or non-action to timely process the promotional credits or resolve the related disputes, and to not allow EveryCall to opt-in to another interconnection agreement to address such actions or non-actions, constitutes a breach of the parties' interconnection agreement, which relieves EveryCall of the obligation of continuing to perform under the interconnection agreement, including any obligation to pay disputed amounts to AT&T.

11. AT&T has failed to show good cause for suspending, discontinuing or terminating wholesale service to EveryCall.

12. Additionally, AT&T filed the Consolidated Complaints with this Commission to resolve many of the same disputes that exist between EveryCall and AT&T. Specifically, the Consolidated Complaints pertain to amounts which AT&T claims that other resellers owe AT&T relating to resold service in South Carolina. The respondents dispute these amounts. The crux of each of the disputes is whether (1) AT&T can apply the resale discount approved by the Commission to the cash back component of various promotional offers that AT&T makes

available for resale, and (2) whether AT&T's customer referral marketing promotions (such as the "word-of-mouth" promotion) are subject to resale.

13. By Joint Motion on Procedural Issues filed May 20, 2010, AT&T and the respondents to the Consolidated Complaints, requested that the Commission:

Convene a consolidated proceeding to resolve the following issues:

- (a) how cash back credits to resellers should be calculated;
- (b) whether the word-of-mouth promotion is available for resale and if so, how the credits to resellers should be calculated; and
- (c) how credits to resellers for waiver of the line connection charge should be calculated.

The Joint Motion on Procedural Issues continued, "Once the Commission has issued an order resolving the issues in the Consolidated Phase, the Parties will work in good faith to address or, if necessary, request the Commission to resolve, all remaining unresolved claims and counterclaims related to the Consolidated Phase and determine what, if any, dollar amounts are owed or credits due each Party."

14. By subsequent Joint Motion on Procedural Schedule, the parties proposed to proceed to hearings in Alabama, Louisiana, North Carolina and South Carolina. Stipulations would be due July 16, simultaneous direct testimony August 27; and depositions (if requested) between September 28 and October 8. Hearings will then be scheduled, beginning in late October, in those four states.

15. While the Consolidated Complaints are pending and prior to resolution of the matters at issue in that proceeding, EveryCall asks that the Commission order AT&T not to suspend service to EveryCall or otherwise interfere with EveryCall's service to its customers. The core issues in dispute between the parties here are pending in the Consolidated Complaints

proceeding. To allow AT&T to suspend or terminate its services prior to a resolution of these disputes could result in EveryCall being forced out of business prior to the Commission resolving these critical issues.

EMERGENCY RELIEF SOUGHT

16. Under Section 8 of the "General Terms and Conditions" of the ICA, either party may ask the Commission to resolve any dispute "as to the proper implementation of this Agreement."

17. In light of AT&T's failure to timely and appropriately process EveryCall's promotional credit requests and disputes, and unjustified denial for EveryCall to opt-in to a different interconnection agreement that would allow EveryCall to address AT&T's failure to timely and appropriately process those requests and disputes, EveryCall asks that the Commission instruct AT&T to take no actions to suspend or otherwise interfere with EveryCall's service to its customers pending a final determination by the Commission in the Consolidated Complaints proceeding.

18. EveryCall further requests the opportunity to present oral argument to the Commission as soon as possible.

19. EveryCall further requests such relief as the Commission finds appropriate.

Respectfully submitted,

s/John J. Pringle, Jr.
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Attorneys for EveryCall Communications, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of July, 2010 served a true and exact copy of the within and foregoing **EveryCall Petition for Temporary, Emergency Relief to Prevent Suspension or Termination of Service** via United States First Class Mail, postage paid and properly addressed, overnight delivery, or electronic transmission to the following:

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By: s/John J. Pringle, Jr.
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